

5/7/12
Adoption Notice

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RESPONSE: The Department agrees that the cross-reference is incorrect. On adoption, the cross reference at N.J.A.C. 7:26C-2.2(a)2ii is corrected to N.J.A.C. 7:14B- 8.1(b)6.

190. COMMENT: N.J.A.C. 7:26C-2.2(a)2ii cross references N.J.A.C. 7:14B-9.1(d). Is closure considered remediation? What if there is no discharge/release from the underground storage tank? (27)

RESPONSE: N.J.A.C. 7:14B-9.1(d) requires that an owner or operator of an underground storage tank (UST) system that is out of service for greater than 12 months without complying with the requirements of N.J.A.C. 7:14B-9.1(c) must close the system in accordance with the closure requirements for UST systems at N.J.A.C. 7:14B-9.2. Part of those closure requirements, N.J.A.C. 7:14B-9.2(a)5, requires the owner or operator to conduct remediation if any contamination is detected above any applicable remediation standard. Conversely, if no contamination is detected, remediation is not required.

191. COMMENT: N.J.A.C. 7:26C-2.3(a)1 exempts Federal lead sites being remediated partially or solely to satisfy the obligations under the Resource Conservation and Recovery Act (RCRA) from the requirement to hire an LSRP. However, the rule does not take into account or address how the person also responsible for completing remediation under ISRA for the same site is to satisfy or document ISRA compliance

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(without issuance of a final remediation document or approved remedial action workplan) authorizing the owner or operator to transfer ownership or operations of the industrial establishment, particularly in the instance when the ongoing RCRA remediation will not be completed until sometime well into the future (after the transfer is to occur). It appears that the intent of this proposed rule is to alleviate the burden of placing unnecessary additional layers of regulatory requirements on the responsible party by exempting all Federal lead sites undertaking RCRA remediation from complying with ISRA. However, it is not all that clear as currently drafted. The Department should clarify this issue and identify the mechanism for demonstrating ISRA compliance at a Federal lead site in the rule. (2)

RESPONSE: ISRA exempts from the definition of industrial establishment any facility or part of a facility that is subject to the RCRA closure and post-closure maintenance requirements. N.J.S.A. 13:1K-8. Thus, there does not seem to be the overlap of which the commenter complains.

192. COMMENT: In discussions between EPA and the Department, it was agreed that the Department would conduct "traditional" oversight for the Department-lead RCRA Government Performance and Results Act (GPRA) facilities. The Department drafted guidance on this, and forwarded letters to facilities informing them that they shall hire

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LSRPs, but that they need to obtain approval from the Department before proceeding with remediations, and the EPA approves of this effort. However, it is unclear from N.J.A.C. 7:26C-2.3(a)3i(1) that RCRA GPRA sites cannot proceed without Department approval because the RCRA GPRA sites are supposed to be included in a category that notes that sites can proceed without Department approval “except if the Department directs otherwise.” The rules should be made a little clearer that RCRA GPRA sites cannot proceed without Department approval. (37)

RESPONSE: The Department agrees that the rules could be clearer on this point. N.J.A.C. 7:26C-2.3(a)1i provides that a person who is conducting remediation at a RCRA GPRA site for which the EPA is the lead need not hire an LSRP. However, the Department erroneously carried the “Federal lead” concept over to N.J.A.C. 7:26C-2.3(a)3i, which requires all persons responsible for conducting the remediation to conduct remediation without Department approval unless the site is a RCRA GPRA site for which EPA is the lead. This provision effectively carves Department lead RCRA GPRA remediations from obtaining Department approval. As the commenter correctly points out, no remediation at a RCRA GPRA site may proceed without Department approval, regardless of whether EPA or the Department is the lead agency. Accordingly, the Department, on adoption, is modifying N.J.A.C. 7:26C-2.3(a)3i to so provide.

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193. COMMENT: RCRA Corrective Action sites that are EPA lead will require Department approvals prior to proceeding with remedial actions, because no exemption is provided for RCRA Corrective Action GPRA priority sites that are Department lead. However, there is no specific mention of RCRA Corrective Action GPRA priority sites that are Department lead in any part of the rule proposal. Thus, under N.J.A.C 7:26C-2.3(a), RCRA Corrective Action GPRA priority sites that are Department-lead sites are no different than any other Department-regulated site and are required to proceed as any other LSRP site. The Department has correctly recognized that EPA will not accept the LSRP as a substitute for the Department's case team. As stated in the preamble to the Rule Proposal, "EPA does not have a program licensing remediation professionals so that they could 'stand-in the shoes' of the Federal government in determining compliance with Federal requirements, and thus the EPA would not accept a decision made by an LSRP that a site was remediated pursuant to Federal requirements." (37)

194. COMMENT: Prior to this proposed rulemaking, the 107 RCRA Corrective Action GPRA priority sites in New Jersey were subject to an agreement between the Department and EPA whereupon Department case teams performed stepwise review and approvals, and EPA relied upon the detailed reviews conducted by the Department as a basis for their own determinations of work adequacy and completion. Under the rule proposal, however, persons responsible for the remediation of GPRA priority sites that are

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Department lead sites will have no choice but to hire an LSRP and proceed per all relevant timeframes and requirements set forth in the rules, despite the fact that EPA will not accept that work as valid without Department case team approval. (3)

RESPONSE to COMMENTS 193 and 194: The ARRCs rules require a person responsible for conducting the remediation to proceed with remediation unless the Department determines otherwise. RCRA GPRA priority sites are sites on which the Department would direct the person only to proceed with the Department's approval. For these sites, the person is required to hire an LSRP, but the Department intends to require the person to obtain prior Department approval before implementing each remediation phase. These requirements are usually set forth with specificity in the administrative order or other oversight document that controls the remediation. Accordingly, no amendments to the rules are necessary.

195. COMMENT: The provisions of the rule proposal stand in stark contrast to the Department's position set forth on June 20, 2011, less than two months prior to release of the Rule Proposal, in an official directive to RCRA Corrective Action GPRA priority sites that are Department lead. The rule must be revised to address the realities of the dual regulation status of these 107 Department lead, RCRA Corrective Action GPRA sites, with a particular focus on addressing the stepwise review and approval cycles

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required, in order to ensure that both Department and EPA are in agreement with the remediation as it proceeds towards completion. In particular, these revisions must provide relief from regulatory and mandatory timeframes, since the RCRA Corrective Action GPRA priority sites that are Department lead sites will be subject to the review cycle times of both agencies, over which the persons responsible for remediation exercise no control. Department lead RCRA GPRA priority Corrective Action sites must not be put at risk of missing regulatory and mandatory timeframes while awaiting EPA review and approval of proposed remedies or the prerequisite investigations and plans, or proceeding and risk EPA disapproving the work after it is completed. Similarly, since EPA will not accept the LSRP as decision-maker, requiring an LSRP be retained for these sites provides no identifiable benefit. Without these necessary revisions, the Rule Proposal presents an unacceptable and unduly burdensome paradigm for these NJDEP lead sites and accordingly it must be revised to incorporate a workable solution for this category of sites. (3)

RESPONSE: The amendments and new rules do not provide for dual oversight of RCRA/GPRA sites where EPA is the lead, and do not require that the RCRA/GPRA responsible party also hire an LSRP and comply with remediation time frames. In fact, the ARRCs rules at N.J.A.C. 7:26C-2.3(a)3i exempt the owner or operator of a Federal

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lead site from the obligation to hire an LSRP, because the Federal Environmental Protection Agency has the ultimate authority on directing the remediation.

The ARRCs rules require a person responsible for conducting the remediation to proceed with remediation unless the Department determines otherwise. RCRA GPRA priority sites are sites on which the Department would direct the person to not proceed. For these sites, the person is required to hire an LSRP, but the Department intends to require the person to obtain prior Department approval before implementing each remediation phase. These requirements are generally set forth with specificity in the administrative order or other oversight document that controls the remediation.

The ARRCs rules at N.J.A.C. 7:26C-3.3 include methods for obtaining an extension of mandatory timeframes, including for circumstances under which the person responsible for conducting the remediation is waiting for Department or other agency approvals. For further information, please see the Department's website at www.state.nj.us/dep/srp/srra/listserv_archives/2011/20110404_1430_srra.htm.

196. COMMENT: At N.J.A.C. 7:26C-2.3(a)2, regarding the notification form for an LSRP, the form should include the number of contaminated areas of concern and impacted media known at the time the form is submitted. (27)

